

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication
of the Rights to the Use of Water
from the Snake River Basin
Water System

Case No. 34-12554 -0001
34-12554 -0002

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as Director
of the Idaho Department of
Water Resources,

RESPONSE TO OBJECTION

Petitioner,

vs.

The United States; the State
of Idaho; and all Claimants to
the use of water from the Snake
River Basin Water System,

Respondents.

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

2. Person who filed objection:

Name: GORDON FULTON
Address: STAR ROUTE
MACKAY ID 83251

3. If this response is filed by an attorney:

Attorney Name(s): A. LYNNE KROGH-HAMPE
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449
Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

2. |X| Source: I respond to the objection concerning the source of water.
3. |X| Quantity: I respond to the objection concerning:
- 3a. |X| The total quantity of water used in cubic feet per second.
4. |X| Priority Date: I respond to the objection concerning the priority date.
5. |X| Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.
8. |X| Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
12. |X| Water Right Recommendation: I respond to the objection concerning:
- 12a. |X| This water right being recommended at all.
13. |X| Description of Reservation: I respond to the objection concerning the legal description of the reservation.

14. ☒ Other: I respond to the objection concerning:

CLAIM TO RIGHT BASED ON RESERVATION UNDER
FEDERAL LAW.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 2, 3, 3.a, 4, 5, 8, 12, 12.a, 13, and 14, and all allegations of the objection regarding these items, IDWR responds as follows.

The director's report recommends certain rights to the objector as shown in the director's report.

IDWR conducts a limited investigation of small domestic and stockwater claims (as defined by Idaho Code section 42-111). IDWR generally does not field examine small D&S claims; IDWR's recommendations of small stockwater claims to the U.S. Bureau of Land Management established by beneficial use in Basin 34 were based on maps and other documentation provided by BLM.

IDWR generally does not require proof of priority date for small D&S claims based on beneficial use. However, rights to the use of surface water from the Big Lost River and tributaries were adjudicated in *Utah Construction Co. v. Abbott*, Equity No. 222 (D.E.Id. 1923); the source of water for this right is tributary to the Big Lost River, and the United States was a party to that case. The United States is therefore precluded by the doctrine of *res judicata* from asserting a beneficial use priority the same as or earlier than the date of the decree, March 15, 1923.

The United States submitted a number of claims which stated on a single claim form that the claimed water right was both appropriated under state law and reserved under federal law. Pursuant to Idaho Code section 42-1411, IDWR is required to include a recommendation for claims to water rights appropriated under state law in Part I of the director's report, to include an abstract of claims to water rights reserved under federal law in Part II of the director's report, and to include the claims to water rights reserved under federal law in Part III of the director's report.

To meet the requirements of the statute, IDWR prepared a recommendation for this claim, which is included in the Supplemental Director's Report Part I for Basin 34, and to which this objection is filed. IDWR also prepared an abstract for this claim, which is included in the Director's Report Part II for Basin 34, and which has the same water right number as the contested claim but includes an "A" suffix. The original notice of claim is included in the Director's Report Part III for Basin

(Over)

34, which was previously filed with the court.

The burden rests with the United States to prove the right, and on the objector to prove the objection, in accordance with these parties' respective burdens of proof.

CHANGES TO THE DIRECTOR'S REPORT

See attached List of Recommended Water Rights Acquired under State Law.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

No. of
Pages

The notice of claim for this right is included in Part III of the Director's Report which was previously filed with the court.

Recommended Water Rights Acquired under State Law

1

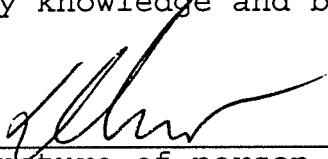
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

David B. Shaw, being first duly sworn, upon oath, deposes and says:

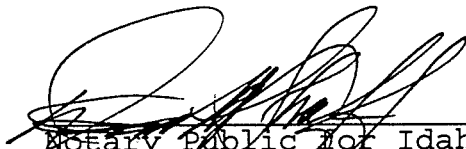
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.



Signature of person filing response

By: A. Lynne Krogh-Hampe
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 16 day of July,
1993.



Notary Public for Idaho

Residing at: BOISE ID

My Commission expires: JUNE 10, 1994

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of July, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

Name: US DEPT OF JUSTICE
Address: K JACK HAUGRUD & DARIA J ZANE
550 W FORT ST
BOX 33
BOISE ID 83734

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: GORDON FULTON
Address: STAR ROUTE
MACKAY ID 83251

A. Lyane Knight Harms
Signature of Respondent or attorney
mailing on Respondent's behalf

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JUL-16-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRING						
TRIBUTARY: WILLOW CREEK						
34-12554	US DEPT OF INTERIOR BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 3380 AMERICANA TERRACE BOISE ID 83706	01/01/1984 03/16/1923	STOCKWATER	01-01 12-31	.01	CFS BENEFICIAL USE
NON-IRRIGATION-USES:						
STOCKWATER, 234 RANGE CATTLE						
POINT OF DIVERSION:						
T10N R22E S17 NWNENE						
PLACE OF USE: STOCKWATER						
T10N R22E S17 NENE						
REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING						
ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY						
USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.						
BLM RECORD ID = 3404582950						
TOTAL QUANTITY:					.01	CFS

